

# **In the Supreme Court of the State of Alaska**

**Jonathan Fox,**

Appellant,

v.

**Gary Grace and Shannon Grace,**

Appellees.

Supreme Court No. **S-17478**

## **Order**

Date of Order: **December 30, 2019**

Trial Court Case No. **3AN-17-09987CI**

Appellant Jonathan Fox, representing himself, filed a motion for expedited consideration of his appeal. He asserts in his motion that this case involves extensive questions about jurisdiction under the Uniform Child Custody and Jurisdiction Act AS 25.30. He points out that AS 25.30.830 provides that if a question of the existence or exercise of jurisdiction is raised in a child custody proceeding, the question, on request of a party, shall be given priority on the calendar and handled expeditiously.

The procedural history of this appeal provides context for this motion and the court's ruling on the motion. When Fox filed his appeal on June 10, 2019, the Appellate Clerk's Office mistakenly opened the appeal under Appellate Rule 204, the Rule that pertains to general appeals. The appeal should have been opened under Appellate Rule 218, which pertains to expedited appeals in cases involving children. Appeals opened under Rule 204 have a different schedule for the timing for service and filing of briefs than for appeals opened under Rule 218. The briefing schedule for Rule 204 appeals is set out in Rule 212. Rule 212 states that the appellant has 30 days to serve and file his opening brief; the appellee then has 30 days to serve and file her responsive brief; and the appellant has 20 days to serve and file his reply brief.

A Rule 218 appeal has a shorter briefing schedule. Under Rule 218(f) the appellant has 20 days to serve and file the opening brief; the appellee has 20 days to serve and file her responsive brief; and the appellant has 10 days to serve and file his reply brief.

In this case the Appellate Clerk's Office issued the opening notice of appeal on June 11, 2019. As mentioned above, the notice mistakenly designated this appeal as a Rule 204 appeal. On August 7, the Appellate Clerk's Office issued its opening brief notice. Fox was ordered to serve and file his opening brief in 30<sup>1</sup> days, due date of September 9. Because of the court's mistake, he was given 10 days more to serve and file his brief than he would have received, had the appeal been correctly opened as a Rule 218 appeal. On September 9, Fox filed a 30-day routine notice for extension of time; under this extension of time his brief was due October 9. On October 10, Fox filed a motion for extension of time under Rule 503.5(c)(1); this motion was granted and his new due date was October 24. Not counting the 13 days provided in the opening brief notice, Fox received a total of 45 days to file his opening brief.

On October 29, the Clerk's Office issued a brief notice to appellees Gary and Shannon Grace; the appellees' responsive brief was due on November 29. This gave the Graces 30<sup>2</sup> days (the same number of days provided to Fox) to file the responsive brief. (Under Rule 218(f) the Graces should have been given 20 days.)

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<sup>1</sup> This deadline was actually 33 days because 3 days were added for mailing.

<sup>2</sup>This deadline was actually 31 days because the 30<sup>th</sup> day landed on a Holiday.

On November 19, Fox telephoned the Appellate Clerk's Office to state that the appeal should have been opened under Rule 218, not Rule 204, and should be expedited. Upon realizing that the appeal had mistakenly been opened under Rule 204, the Deputy Clerk agreed with Fox that the appeal should have been opened as an expedited appeal. The Deputy Clerk changed the case type making this appeal a Rule 218 appeal. Thus, *at this point the appeal was in fact an expedited appeal.*

On November 27, the Graces filed a motion for a 30-day extension of time to serve and file the appellees' responsive brief. Notwithstanding that Fox himself had filed a motion for a 30-day extension of time (after having given notice he was invoking his right to a routine 30-day extension of time), Fox opposed the Graces' motion for an extension. The court granted the Graces' motion because it would be unfair to deny it given that Fox's motion for the same extension had been granted. The Graces' brief's due date was set for December 30.

On December 18, Fox telephoned the Appellate Clerk's Office inquiring about the status of his motion for expedited consideration. He was advised that the motion was not yet ripe for decision. Fox seemed to be concerned that the Graces were receiving an unfair amount of time to complete the appellees' responsive brief. Fox is again reminded that he asked for and received two 30-day extensions of time to serve and file his brief. As of the date of this order, the Graces have asked for and received only one 30-day extension of time. All parties are advised that the court intends to treat the parties fairly: this means that one party (the Graces) will not be prohibited from receiving the same amount of extension of time that the other party (Fox) has received.

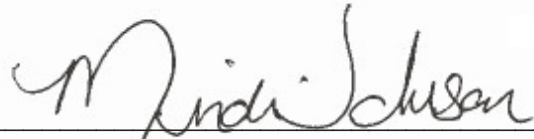
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In light of this procedural history the court rules as follows.

Fox's motion to treat this appeal as an expedited appeal is **DENIED AS MOOT** because the appeal is now classified and will be treated going forward as an expedited appeal.

Entered at the direction of an individual justice.

Clerk of the Appellate Courts

  
Mindi Johnson, Deputy Clerk

**Distribution:**

Mail:  
Fox, Jonathan  
Pearce, Herbert M